

**STATEMENT OF  
COMMISSIONER KEVIN J. MARTIN  
APPROVING IN PART, DISSENTING IN PART**

*Re: Complaints Against Various Broadcast Licensees Regarding Their Airing Of The  
“Golden Globe Awards” Program, Memorandum Opinion And Order, March 3, 2004*

I am pleased that the Commission finally is making clear that the use of the “F-word” during this prime-time broadcast was both indecent and profane, regardless of whether used as an adjective, adverb, or gerund. I am particularly pleased that, at long last, the Commission is enforcing the statutory prohibition against the broadcast of profanity. Better late than never.

I firmly support these conclusions, and approve these aspects of this Order.

I disagree, however, with the Order’s characterization of our precedent on indecency, and the corresponding conclusion that licensees were not on notice that the F-word is indecent.

Even more troubling is the conclusion that we cannot issue a fine for the use of profanity. The majority argues that there is no notice. How ironic that the majority relies on the Commission’s own failure to enforce its statutory mandate as the basis for NBC not knowing that the F-word is prohibited profanity.<sup>1</sup> Taking a step back, I can’t help but think NBC was “on notice” that the F-word was profane. In fact, *NBC* hasn’t even claimed that they were not on notice that the F-word was profane. Yet the majority concludes otherwise, and issues no fine. I cannot support this analysis, and therefore dissent in part.

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<sup>1</sup> I note that the Order explains that current case law, including a recent decision interpreting the very statutory provision at issue, defines profanity according to its common interpretation. *Order* at ¶13. Treatises document the rejection of old case law that had found profanity to mean blasphemy. 12 Am. Jur. 2d Blasphemy and Profanity 9. But even the very old case law equating profanity with blasphemy did not limit profanity to blasphemy. Moreover, the Commission’s own precedent has never implied that profanity was limited to blasphemy. Indeed, the only case on point found blasphemous language did *not* constitute profanity. *Raycom America, Inc., Licensee of Station WMC-TV, Memphis, TN*, Memorandum Opinion and Order, 18 FCC Rcd. 4186, 4187 (2003).